

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION OPIATE
LITIGATION

THE COUNTY OF SUMMIT, OHIO, ET AL.,
Plaintiffs,

v.

PURDUE PHARMA LP, ET AL.,
Defendant

MDL NO. 2804

CASE NO. 17-MD-2804

JUDGE: DAN AARON POLSTER

SUMMARY SHEET FOR DEFENDANT
DISCOUNT DRUG MART, INC.'S
MOTION FOR SUMMARY
JUDGMENT

Pursuant to Special Master Cohen's Order Regarding Pretrial Motions for "Track One" Trial, dated May 30, 2019, Defendant Discount Drug Mart, Inc. ("DDM") submits the following summary sheet relating to its Motion for Summary Judgment:

- Plaintiffs did not add DDM as a defendant until May 18, 2018, and because the longest possible statute of limitations applicable to the claims against DDM is four years, any claim based on distributions/shipments made by DDM prior to May 18, 2014 are time barred;
- DDM distributed *less than 0.9%* of the opioids legally distributed to the Plaintiff counties, all of which were distributed to DDM's own pharmacies; given DDM's *de minimus* market share, Plaintiffs cannot meet their heavy burden of establishing the requisite proximate cause;
- Plaintiffs' statutory nuisance claim is moot; DDM does not distribute Schedule II or III opioids, so there is no conduct to enjoin;
- Plaintiffs' public nuisance and negligence claims fail because the evidence reveals that DDM distributed one type of FDA-approved opioid to its own pharmacies (which accounted for less than 0.9% of the opioids at issue), and did not distribute opioids to "rogue" internet pharmacies or pain clinics;
- Plaintiffs' claim for injury through criminal acts fails; DDM has not been charged with, much less convicted, of such a crime, and the record contains no evidence that supports either prong of R.C. 2925.02(A); and

- Plaintiffs' unjust enrichment claim fails because there is no evidence that Plaintiffs conferred any benefit of any kind on DDM as required under Ohio law.

Respectfully submitted,

/s/ Timothy D. Johnson
Timothy D. Johnson (0006686)
CAVITCH FAMILO & DURKIN, CO. LPA
Twentieth Floor
1300 East Ninth Street
Cleveland, Ohio 44114
(216)621-7860
(216)621-3415 Fax
tjohnson@cavitch.com
Attorney for Defendant Discount Drug Mart, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing **SUMMARY SHEET FOR DEFENDANT DISCOUNT DRUG MART, INC.'S MOTION FOR SUMMARY JUDGMENT** was filed and served this 19th day of July, 2019 in accordance with Doc #: 1719.

/s/ Timothy D. Johnson
TIMOTHY D. JOHNSON
Attorney for Defendant Discount Drug Mart, Inc.